Our Land Laws

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SHORT LECTURES

EXPLANATORY OF

OUR LAND LAWS

DELIVERED AT THE WORKING MEN'S COLLEGE

BY

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65 CORNHILL & 12 PATERNOSTER ROW, LONDON

1873

THE following LECTURES were delivered during the present month to the Students of the Working Men's College, Great Ormond Street, London. The author's object was humble: it was merely to give such a concise and simple sketch of the main outlines of a portion of our law, now receiving much public attention, as would interest non-professional men, to whom even the admirable class books of Mr. Joshua Williams are unknown.

February, 1873.

CONTENTS.

LECTURE I.

LECTURE II.

LECTURE III.

OUR LAND LAWS.

LECTURE I.

Necessity of some knowledge of the history of the land laws—Manner of holding land in England before the Conquest—Effect of the Conquest on the holding of land—Introduction of the Feudal System—Fundamental principle of the land laws—Tenure—History and description of tenures—Different classes of estates: Freeholds—Copyholds—Leases for terms of years—Varieties of freehold estates—Estate for life.

THE LAW relating to the land of this country cannot be rightly understood without some previous knowledge of its history. It is not alone that its subtle theories, fine distinctions, restrictions, forms, and terminology cannot be made clear without some reference to their origin; but the law itself is very ancient, many of its rules having come down to us from the days when the foundations of our jurisprudence were laid. Some of the commonest every-day dealings with land derive their validity from Acts of the Parliaments of Edward I. and decisions of the Judges of Edward IV., while the modern changes in the law have touched the ancient system so lightly that an acquaintance with it is necessary before the very changes can be understood.

When the bands of Teutonic invaders first settled in

England, their manner of dealing with the lands they conquered was very simple. They settled on the tract which their swords had cleared of its old owners, and occupied it as their own territory or *mark*. A large portion was set aside for the general benefit of the little community, to be enjoyed in common, or to be let on such terms as the public voice might decide, and the remainder was allotted in separate portions to the individual conquerors; the extent of each portion being, no doubt, determined by the rank or prowess of the warrior who received it, but, at the same time, care being taken that each freeman had a share of the soil he had helped to win. As the swarms from the North grew more numerous, the quantity of land thus divided increased, until it included most of ancient England.

Lands thus held by individual men were held 'allodially,' that is, the holder had no over-lord. In regard to his land, he knew 'no superior but God and the law.' This is the nearest approach to absolute property in land which can be found recognised in the whole range of English jurisprudence. But all the lands which were held allodially were not acquired by so rude a form of grant. They were not all mere booty. As English society became more settled, and shires grew out of the aggregation of marks, kingdoms out of the like aggregation of shires, and finally the supremacy of Wessex became established, the land which had been reserved for the common benefit of its conquerors—the *folkland*, as it was called—passed into the guardianship of the king and his witan. With this guardianship passed the right of giving the land away—a right very freely exercised. Numbers of

grants were made by which holdings were carved out of the common land of the realm and given to individuals. From the fact that these holdings were granted by charter they were known as *bookland*, a term which, in contradistinction to *folkland*, came to be applied to all land held by an Englishman as his own.

But these later gifts of *bookland* were not all purely allodial. The nearer we approach the Conquest the oftener we find lands granted upon condition that the grantee should perform certain services. In fact, we reach the time when the doctrine of tenures, which forms so fundamental a portion of our land laws, had its origin. By the most ancient common law of England which has come down to us, all *bookland* was liable to three burthens: the obligation of the owner to serve against the enemy, and to contribute to the repairs of the fortresses and bridges of the kingdom. These obligations were due altogether to the commonwealth, and were imposed by the law of the land; and Englishmen who held their lands by right of the earlier allotments or grants, held them subject to these obligations only. But the services on the performance of which many later grants were made conditional were very different. They were personal services to the king or some great lord, not due by common law, but rendered as a return for a gift of lands.

The growth of the aristocracy of thegnhood and of the custom of commendation powerfully influenced this change in the manner in which the land of England was held. Thegns were not an aristocracy of blood, like the eorls. They derived their nobility from their place amongst the personal following of the king

or a great lord, an ealdorman, or bishop; and, as was natural, their services were often rewarded by grants of land conditioned on the performance of services to their lord, which, as his followers, they felt no especial burthen. Commendation was the custom which arose of every Englishman commending himself, or becoming 'the man' of some greater personage than himself. The great lords commended themselves to the king, ordinary freemen to the lords, and so on; and by right of the tie thus formed the lord was bound to give protection to his 'man,' and the 'man' owed certain duties to the lord. But it must be understood that this tie was of a purely personal nature, and did not arise in any way out of the land.

Thus we find that immediately before the Conquest the land of this country was divided into three portions: one of which belonged to the community at large, and was enjoyed in common, although liable to be given away by the king and his witan; another portion was held by individuals as of their own absolute right, free from all obligations except those imposed on them by the common law; and the third was held by individuals subject not only to the same obligations, but to the performance of certain services to superior lords. Every man also, save the king, was bound by a personal tie to render certain services to some person above him, and in return was entitled to receive that person's protection.

The Conquest made great changes in all this. The lands of Englishmen were widely confiscated by William and his immediate successors, and granted to Frenchmen. Re-grants of their own lands were made to some Englishmen as a matter of favour, and others

were, by good luck of one sort or another, allowed to retain the heritage of their fathers. But Norman notions both as to the relationship which should exist between man and man, and as to the way lands should be held, were very different from those which existed with us. As the Norman ideas of nobility of blood and the hereditary right of certain families to reign were foreign to the conquered people, so the laws and customs relating to land in Normandy differed widely from those which obtained in England. The holdings of land in Normandy were altogether feudal, and feudalism had become in that country an elaborate system. The relationship of lord and 'man' was not, as with us, a purely personal tie; it had taken the form of lord and vassal, and the services due to the lord were not due by reason of the tie so much as by reason of the land held by the vassal. To this relationship also had been attached services and burthens quite unknown in England. But the conquerors had more respect for their own notions than for the feelings of the people they had subdued. The grants and confirmations made by the French kings of the soil of England were made after the manner of their own country. The difference between the modes of holding at first seemed slight, and not of much consequence to a warlike people. An Englishman who, in the days of the Confessor, was absolute owner of his land, though bound to perform services at the bidding of the lord whose 'man' he was, would not see much change in having under the Conqueror to render the same services by reason of his holding the land. Then, this change was very gradually made. It was not until the reign of Henry II. that it became


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universal, and that its full extent became apparent. It was when the French lawyers who flocked over to London had introduced their subtleties, and built up a system of law on the basis of that introduced from Normandy, that the difference between the new system of land laws and the old became so evident.

The history of this great change which took place in the manner of holding land in England is very obscure, and it is not easy to fix the precise steps by which it was accomplished. It is certain, however, that by Henry II.'s time not only were all lands held by Englishmen subject to feudal services, but the law relative to such lands had become so systematised that many of the principles which lie at the base of our present land laws were firmly settled; for in King Richard I.'s time—beyond which our courts' legal memory does not extend—we find a defined legal system in existence, which, during the last six centuries and a half, has developed into the elaborate and intricate law with which we are familiar.

The cardinal doctrine of this system—the feudal, as it is commonly called, though really it only borrowed some feudal principles—was that the king was the over-lord of all the soil of England, and that any man holding any portion of that soil held it either mediately or immediately from him. Lords might hold directly from the king, and humbler folk from them. The chain of lord and tenant might be very long, but still it was a chain—the top link was the king, and the bottom the person cultivating the land for his own profit, no matter how many links intervened; and the relationship that existed between any two connecting

links of this chain was that of lord and vassal. This not a personal relationship, such as commendation formed, but one existing by reason of the land held by the vassal of his lord, and which bound him to perform certain services to the lord—the performance of the services being the condition on which the vassal held the land. This relationship was called the tenure by which the lands were held. So far the old English *bookland*: as for the *folkland*, by force of the same doctrine, it became *terra regis*—the private domain of the crown. This doctrine is still one of the fundamental principles of our law. It therefore follows that there can be no absolute ownership of land in this country. No man can own a square foot of England in the same way that he can own a horse or a piece of furniture. He can at the very utmost possess an estate in it—an estate defined in its extent, and enjoyed only on certain conditions. These estates widely differ from each other in the rights they confer and the value of the interest in the land which they give. They may be divided into three great classes: freeholds, copyholds, and leaseholds for a term of years.

Before describing these several classes of estates, it may be well to explain a little further the doctrine of tenure, as all estates are subject to it. The freehold tenures, as they are called, those by which freehold estates were or are now held, are by far the most important; and as the divergence of other tenures from them can best be explained in another place, at present we will speak only of freehold tenures.

Formerly there were very many species of these tenures, practically distinguished by their incidents

or the obligations or duties arising out of them. Thus some freehold tenants by reason of their tenure were bound to perform services on their lord's domain—to do a certain amount of ploughing or carting, others to repair the fortifications of a town, or to follow their lord to war. But there was more uniformity in what were deemed the more honourable tenures, those by which barons and knights held their lands. There was grand serjeanty, under which a tenant was bound to carry the king's banner, lance, or sword; and petit serjeanty, under which the tenant every year was bound to give the king some weapon or piece of armour. But the two tenures which were the most usual, and therefore the most important, were those of knight service, and free and common socage.

By the tenure of knight service, the tenant was bound to do homage, and take an oath of fealty to his lord, and besides performing military service under certain conditions, which was a common incident of most freehold tenures, to render him aids, or contribute money in certain cases, viz., when the lord was taken prisoner in war and had to be ransomed, when he made his eldest son a knight, and married his eldest daughter. Under this tenure also, the lord, amongst other rights, was entitled to the custody of the person and lands of the tenant during minority, without any liability to account for rents and profit, and to exact a heavy pecuniary penalty from a ward who refused to marry at his bidding.

Free and common socage is one of the most ancient, if not the most ancient, of tenures. It is so old that the derivation of the name is doubtful. Possibly it had its origin in the allodial holdings so common before the

Conquest, and remained the tenure of those lands which some Englishmen were fortunate enough to retain during the days of the French kings of England, without forfeiture or re-grant. But a very small portion of the soil was held by this tenure. It was the most beneficial of all for the tenant, the main incident being a small rent payable to the lord and the ordinary feudal aids. It was exempt from all the burthen of military services, wardship and marriage, which weighed so heavily on those who held their land by knight service.

So heavily did these burthens weigh, and so flagrant were the abuses to which they were open, that English History during the five hundred years succeeding the Conquest is full of the complaints of the landholders respecting them. At last a chance came of making a great change, and it was eagerly seized. One of the first acts of the Restoration Parliament was to sweep away all these burthens, and, only reserving some honorary services, to turn all the freehold tenures of estates of inheritance into free and common socage, and that was discharged from liability to the old feudal aids.

This, therefore, is the tenure of almost all the land of England held in fee simple and in tail; and as the old incidents that were at all onerous were abolished, those which are left are too unimportant to dwell on, except perhaps that of *escheat*. This is the right of the lord in case the tenant dies without an heir and intestate, or is sentenced to death for murder, to enter on the lands and keep them.

To return to the three great classes of estates in England—freeholds, copyholds, and leaseholds for terms of years.

A freehold was originally simply the smallest estate which any freeman could worthily accept. Now it will be easily understood that, in a warlike time, this smallest estate in a piece of land which it was worth the while of a soldier to accept at once as a reward for past services, a means of subsistence, and a retainer for any future services which he might be called on to perform, was an estate, or the right of ownership, for the term of his own life. If the ownership was given so that it would descend to his children or other relatives after his death, so much the better. But so far as the first recipient was concerned, anything less than an estate for his life was in those days unworthy of his acceptance, and so came it to pass that such an estate was called a freehold; and estates in land which were not only for life but went to the owner's relatives on his death, being still more worthy of a freeman's acceptance, were called freeholds also.

But in the days when our land laws had their origin a great number of Englishmen were not freemen. They were serfs or villeins, as they were technically called—slaves under a very peculiar and special code of law. Under this code numbers of these serfs were attached to the soil, bound to till it for the lord, but having a right to a maintenance at the hands of their master. In such circumstances, as might have been expected, the lords in the management of their estates adopted a very simple plan. They exacted a certain amount of work from each serf, and allowed him a piece of land to get his living out of when not working for his owner. After a time these serfs acquired a fixed estate in their pieces of land, and they gradually grew from being mere slaves existing at the will of the lord into tenants,

bound indeed to perform certain work for their lord which in a military age was deemed degrading, but still tenants holding their lands by right of the entry of their allotments on the court rolls of their lord's manor, or copyholders.

In the earlier days of our land laws leases for terms of years were scarcely known. They were beneath the acceptance of the military freemen, and much too defined for a lord to give his serf. It was not until the relationships of life became more complicated that leases for years, under which so much property is now held, became common and the estimation in which they were originally held is shown by the fact that in law the smallest freehold estate—that for life—is considered greater than the longest term of years; so that a man possessing a lease for life of a piece of land, at a high rent, is considered technically as having a larger estate in the land than if he had a lease of it for a thousand years at a peppercorn per annum.

Freehold estates are of many sorts—estates for life, or in tail, or in fee. For the purpose of describing the chief characteristics of each of these, it is better to take them separately.

A life estate is created by the grant of land to a man for his life. Such an estate was formerly deemed the smallest of freehold estates. Still smaller estates, however, such as the estate a woman would hold in lands given her during widowhood, are now considered freehold; but such estates are comparatively rare. An estate for life, on the other hand, is very common. Indeed, most of those who are called landowners in England are simply tenants for life of their lands. This state of things arises from the custom of settling

family estates on marriages. By these settlements, as a rule, the person actually in possession of the lands, and those living who are to succeed him, are made tenants for life, the next generation of successors being made tenants in tail. Thus, on the occasion of the marriage of the eldest son of a landowner, who we may suppose possesses his estate in fee simple, the custom is to cut down this estate to that of a tenant for life, give another life estate to the son who will come into possession on the father's death, and give estates tail to the children of the marriage. If the father is only a tenant for life already under a prior settlement, there are generally other means whereby the same object, that of preserving the lands in the family by giving to the possessor only a limited ownership, can be accomplished. It is under such settlements as these that most of the land in the kingdom is held.

A tenant for life has a very restricted estate. Of course, he can sell or give away his own life interest in the lands if he wishes, but he cannot in any way affect the estates of those who are to succeed him. He therefore cannot encumber the estate with mortgages, nor could he formally grant leases which would be valid after his death. By strict law he cannot cut timber, or open mines or quarries, though he may work those already open. The rigid rules of the old law, however, have been relaxed; and by virtue of modern Acts of Parliament tenants for life may now grant leases for certain periods. It is customary also to give special powers in settlements, enabling tenants for life to deal with their lands in a manner which they could not otherwise do. Still most of these

tenants for life hold their estates under very stringent practical restrictions. For instance, there are very few who could in any way grant a lease of a farm for fifty years, or of a house for one hundred, or receive or take a sum of money down in lieu of part of the rent reserved on a lease they could grant; and as nearly all the large landowners in England are tenants for life, it will be seen how restrained ordinary dealings with land must be.

LECTURE II.

Estates in tail—Their history—Recoveries—Barring entails—Rights of the owner of an estate in tail—Estate in fee simple—Its history—History of the power of alienation of land *inter vivos*—Of the power of devising land by will—Rights of an owner in fee—Descent of estates of inheritance—Rights of husband and wife—Marriage settlements, their object and effect.

An estate depending on the existence of a single life is not technically an estate of inheritance, although, if the owner of such an estate has it for the life of another man, it will, under certain circumstances, descend to his heirs. Estates of inheritance, or those which may be inherited, are of two sorts — estates in tail, and estates in fee simple.

An estate tail is created by the grant of lands to a man and the *heirs of his body.* Strictly speaking, such a grant gives an estate in tail general, for the grant may be made to the heirs male, or heirs female, or the heirs by a particular wife—then the estate is said to be in tail male, or tail female, or special tail.

The creation of this species of estate more than of any other is a pure matter of custom in this country. But for the practice of limiting the ownership of land by marriage settlements which is so universal, estates in tail would soon fall into disuse. It is because their incidents are so peculiarly adapted for all the purposes

of settlements that they so generally exist. The history of these incidents is very curious.

The absolute right of children to succeed their father was not acknowledged for very many years after the Conquest. How far it existed amongst Englishmen before the Conquerer came over it is unnecessary now to discuss. But the Norman invaders brought over with them the germs of the modern idea as to this right. In their own country these germs had become so far developed that the principle of the hereditary right of certain families to crowns was admitted, though the strict order of succession, so familiar to us, was quite unknown. In such a purely military age the accession of an infant, or an imbecile, to a place at the head of affairs was a danger too great to be risked. So we find that though the claims of families were admitted, the claims which we should consider all-powerful in individuals, according to our modern canons of descent, did not carry much weight. None of the six immediate successors of the Conqueror, for instance, would be deemed, according to our present law, the rightful occupant of the throne. As it was with the crown, so it was with dignities now hereditary, and so also, to a great extent, with land. It did not follow that an estate granted by the Conqueror to one of his followers descended to his children. They might have a claim to a grant of the land to them as an act of grace at their father's death, but it was as an act of grace only: the original estate was simply one for life to the father. It is probable that from the first some estates were given which, by the terms of the original grant, descended to the donee's children; and it is clear that ere long it became customary to grant estates on such terms; but the history of this change is exceed-

ingly obscure. It is certain, however, that by the time of Henry II., grants of estates to a man and his 'heirs' were not only fully recognised as conveying an estate which would descend to the grantee's children, but the more technical meaning had been attached to the word 'heirs,' and, in default of children, an estate so granted would descend to the collateral relatives of the grantee. It was this extension of the original meaning of the word 'heirs' which led to the use of the words 'heirs of his body,' when it was intended to limit an estate strictly to the issue of the grantee.

Originally the word 'heirs' was used in the sense of issue, and a grant of an estate to a man and his heirs was a direct gift of an estate to the issue of the grantee. Even after the word 'heirs' had acquired so technical a meaning as to include collateral relatives, the grantee in possession had no power to dispose of the estate, so as to prevent the heirs succeeding; they were as much donees under the original grant as he himself was. It was not very long, however, before the owners in possession acquired this right, though, as is the case with most of those early changes, the steps by which they acquired it are wrapped in obscurity. We know little more than that in Henry III.'s reign it was firmly established that the possessor of an estate granted to a man and his heirs, or the heirs of his body, could prevent any relative succeeding to it—in fact, that the employment of the words in the original limitation gave the right to a possessor to sell or give the estate away.

Ever since that time the law has been unchanged in this respect with regard to estates given to a man and

his heirs, that is, estates in fee simple. But a change was made as to estates in tail, or those given to a man and the heirs of his body.

It was one thing to alienate or dispose of the land as against heirs, it was another to do so as against the lord of the tenant; but this power during the reign of Henry III. had also been secured. The most usual way of disposing of lands in those days was by *subinfeudation*, that is, by subletting the lands to other tenants; and one of the first rights which tenants acquired of alienating their lands as against their lords was that of subletting these lands, so that if their own estates came to an end, their under-tenants continued to hold the lands sublet of the superior lord. Thus the lord's chance of obtaining back an estate from a tenant on account of failure of heirs was considerably reduced. This right was still further extended, and at length we find that in the beginning of the reign of Edward I. it was clear law that the possessor of an estate granted to a man and his heirs might at once alienate it as against his lord; and the possessor of an estate granted to a man and the heirs of his body might do so the moment he had a child born.

But the great lords were not prepared to submit tamely to such encroachments on their ancient rights, and in the thirteenth year of Edward I. a famous statute was passed, called *De donis conditionalibus*, which enacted that the will of the donor, according to the form in the deed of gift manifestly expressed, should be from thenceforth observed, so that they to whom the tenement was given should have no power to alien it, whereby it should fail to remain to their own issue

after their death, or to revert to the donor or his heirs if issue should fail.

This enactment had the desired effect. For two hundred years all the estates tail held in England were inalienable. The heirs of the body of the grantee succeeded in the strict rule of succession and by right of the original gift; and the superior lords had all their chances of getting back the lands granted if there should be any failure of the grantee's issue. But people began to see how prejudicial it was to the interests of the kingdom that so much of the land should be tightly bound up, and they looked out for a remedy. From Parliament, where the great lords predominated, nothing could be hoped; but at length, in 1473, a decision of the judges known as that in *Taltarum's case*, scarcely noticed at the time, opened a way of escape from the difficulty. This was by means of a fictitious suit for the recovery of the lands.

The actual proceedings in such suits in process of time became very complicated; but essentially they consisted of an action against the owner of the estate tail, by a person called the demandant, for the recovery of the lands. The cause had to come formally to a hearing, and when the claim was made the tenant in tail, used to produce the usher of the court, or some other person having as little to do with the matter, as the original grantor of the estate tail, and call on him to warrant or make good his title. The demandant used then to obtain permission to speak to this person in private, and take him out of court. In his absence judgment had to be given in favour of the demandant, on the ground that the person bound to warrant the estate was not forthcoming to do so. And this judgment

gave a fee-simple estate, instead of the estate in tail, or the entail was said to be barred.

The right to perform this juggle was held to belong to every owner of an estate tail, and the juggle itself, wrapped up in many complicated forms, continued to be the only means by which an estate tail could be barred, until it was abolished, in the year 1833, by the Act under which estates tail are at present barred. Under this statute a tenant in tail in possession by a deed in accordance with the Act can bar the entail and make himself owner of the land in fee simple. But this right must be exercised by deed. An estate tail cannot be barred by will.

Besides the right of making his estate one in fee simple, the owner of an estate tail in possession now-a-days has very wide powers over the land. He may cut timber and open mines; he may grant leases, under restrictions which allow him greater latitude than is given to a tenant for life, but still confine him within very narrow bounds when the absolute power of leasing possessed by a tenant in fee simple is remembered. His estate is also, though by recent law, subject to his debts, and on treason is liable to forfeiture to the Crown. With regard to the rights of widows, and to descent, it is so similar to an estate in fee simple, that these incidents of both are better considered together.

An estate in fee simple—the largest estate in land recognised by English law—is an estate granted to a man and his heirs. Although this is so very large an estate that in common language a tenant in fee simple is talked of as owning the land out and out, yet it is only an estate held of a lord, and is widely different

from the absolute ownership which may be enjoyed in a piece of furniture. The early history of this species of estate, as has been already stated, is very obscure, and we know little about it, except that in the reign of Henry III. it was clearly established that the owner of such an estate had, like the owner of an estate tail, a right to alienate it, so as to destroy the claim of his heirs to the succession, and to affect the lord's prospect of regaining the estate by a failure of heirs to inherit. The statute *De donis* destroyed this right of the owners of estates tail, but did not affect in any way estates in fee simple, and so far as the right to dispose of such estates without reference to any claim of the heirs to succeed, the law as it existed in Henry III.'s time has remained unaltered. The right to alienate the estate so as to affect the prospect of the lord regaining the land on a failure of heirs has had a very different history. As has been stated, the common method of alienation in the days of the infancy of our land laws was by subletting, or subinfeudation, as it was termed. This system, besides affecting the lord's chance of regaining his lands, caused the creation of a large number of middlemen between the superior lord and the tenant in actual possession of the lands; and as in many ways it was to the advantage of a lord that the lands should be held by his immediate tenant, the lord's interest suffered. As the lords took care of their interest in the reversion of estates tail by passing *De donis*, so five years later they secured themselves against this species of damage by passing another statute, called *Quia emptores*, from its first two words. By this statute the right of every freeman to sell his lands at pleasure was given,

but so that the purchaser should hold the lands of the superior lord at the same services and customs as the vendor held them.

Since the passing of this statute owners of estates in fee simple have been at liberty to sell their lands if they choose; but should they sell their whole estate in them, they cannot reserve any rent. So long as the technical estate in fee simple is not parted with, the owner may let the land on lease at a rent for thousands of years, but if the fee simple goes no rent can be reserved. There are means by which annual sums, practically as valuable as rent, are made payable out of fee-simple estates, but no rent, in the technical and proper sense of the word, can be reserved—nor, of course, can the relationship of landlord and tenant be created.

Although the right of alienating fee-simple estates was thus established, it must be remembered that it extended only to alienation during the lifetime of the owner. It gave no power of disposition by will; so, in the event of the owner dying, his estate, like an estate tail, descended uncontrolled by his wishes. The citizens of London and of a few other places possessed alone the power of devising their lands. After the establishment of the right of alienation *inter vivos*, this want of the power of disposition by will became seriously felt; and in the fifteenth century lawyers and ecclesiastics seem to have joined in the invention of a plan which gave it indirectly. This was the plan of conveying lands to such *uses* as the owner might by his will appoint, and then appointing or naming the uses in the will. The Court of Chancery, in those days a semi-ecclesiastical tribunal, held that when the land

was conveyed to uses, the legal owner of the land held it for the person having the use—in our modern language, held it in trust for him—and took care that this beneficial owner should have all the enjoyment of the land.

For another century at least, this was the only way in which an ordinary Englishman could dispose of his lands by will, and it was very extensively adopted. At last, after this legalised evasion of the law had again and again excited the attention of Parliament and the ordinary law courts, a very celebrated statute was passed in the reign of Henry VIII., by which, practically, it was enacted that persons having the use or beneficial ownership of lands, should be deemed in lawful possession of such lands; so that a grant of land to A. to the use of B. gave and still gives the land to B. This statute destroyed the device by which the law had so long been evaded; but five years afterwards Parliament passed an Act giving a wide power of devising land by will, and on the abolition of feudal tenures at the Restoration, the power became universal.

The owner of an estate in fee simple now, therefore, has, as a rule, a full right of disposing of his land, either while living or by his will, but to this power of alienation there is still some restraint. Thus, by the Mortmain Acts, lands can only be conveyed to charitable uses, with some exceptions, under very stringent provisions, and they cannot be devised to such uses at all by will. No lands either can be conveyed to any corporation, except it has a licence to hold lands from the Crown.

The owner of an estate in fee simple is of course subject to none of the restraints on the enjoyment of his

land to which tenants in life or in tail are. He can lease, cut timber, open mines, at will—in fact, he can use the land as he wishes.

An estate in fee simple is liable to the payment of all the owner's debts: a statement which might be thought superfluous, but for the fact that this has only been the law since 1833. In cases where the owner is attainted of high treason, the lands are forfeited to the Crown, and if attainted for murder, they escheat or revert to the lord, who in most cases is the Crown.

The descent of estates in fee simple and in tail is now regulated by an Act passed in 1833; but the old law, which was much more involved than that which now obtains, still governs any descent on the decease of any person who died before January 1, 1834. By the law now in force inheritances lineally descend to the issue of the last purchaser—the word 'purchaser' meaning technically a person taking land otherwise than by descent, so that a devisee under a will equally with a person buying the land would be called a purchaser. In this descent the male issue is preferred to the female, and where the male issue are of the same degree of consanguinity the eldest only inherits; but females inherit together. Lineal descendants also represent their ancestor. Thus if A. B. died possessed of an estate in fee simple or in tail general, that estate would descend to his eldest son if he had one, and on the death of the eldest son without issue to the second son, and so on through the sons until they were exhausted. Then it would go to the daughters, each of whom would take an equal share; but if any one of the children died leaving issue, the issue would succeed

as their father or mother would have done, had he or she been living. In case of a 'purchaser' dying without issue, the rules of the descent of a fee-simple estate are too elaborate to be set out here, but all the preceding canons are applicable to collaterals as well as issue.

It need scarcely be said that in a system of law possessing such a history as that relating to land, the portion which governs the relationship of husband and wife is very peculiar.

The old law was simple. A husband and wife became one by marriage, and the husband acquired a right to the rents and profits of the wife's estates of inheritance during her life, and might dispose of them as he wished to the extent of that interest. If there was issue born of the marriage, which could by any possibility succeed to the estate, the husband, if he survived the wife, held the lands for the remainder of his life, as tenant by the courtesy of England. The actual land itself might be disposed of by husband and wife jointly during the marriage, but not by either alone. So much as to the rights of the husband in the wife's lands; as to those of the wife in her husband's, she had none during his life, but on his death she was entitled for the rest of her life to one third of the lands which the husband had at any time during the marriage owned in fee simple or in tail, and to which any issue she might have had might have been heir. This was called the wife's dower. No equitable estate was sufficient to give dower; it must have been one of which the husband, to use the technical expression, was seised.

So far as the husband's interest in the wife's lands goes, the old law remains practically unchanged, except that the husband cannot dispose of the rents and pro-

fits of the wife's lands during her life without her consent; but in 1833 the law of dower was amended, and women married since the 31st December of that year come under the new Act. By this no widow is entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime or by his will, and all debts and encumbrances to which the lands might be liable, are effectual against dower, or the husband even may deprive his wife of the right by a simple declaration made in any deed or by his will. On the other hand, the wife may have dower now out of the husband's equitable as well as legal estate.

But in practice very little land is affected by these laws regulating either descent or the rights of husband and wife. Almost all the soil of England, as has been before stated, is subject to settlements; and by these settlements the extent of the estate taken by each person is defined, the line of descent is pointed out, and the rights of all persons interested in the lands established. To understand the first principles of our land laws, therefore, it is necessary to comprehend the object and scope of an ordinary marriage settlement.

The object of these instruments is to preserve the land in a family, and to make provision for the various persons interested in the property. But the law will not permit land to be tied up beyond certain limits. Mere limited estates in land cannot be given to an indefinite series of owners; nor can any estate now exist like those in tail which existed from the passing of *De donis* to the decision in *Taltarum's case*, except in some lands, such as Blenheim and Strathfieldsaye, which have been settled on certain families by Act of Parliament as a reward for eminent services. A mar-

riage settlement, therefore, can only tie up the land for a time; anything like perpetuity must be obtained by making a new settlement every generation.

The simplest way of explaining a marriage settlement is by taking a supposititious case. Let us imagine that a man with 2,000*l.* a year in land is about to marry. He would then settle his estate in some such way as this. He would give himself an estate for life, with perhaps somewhat fuller powers of enjoyment than the law would attach to such an estate if given simply. After that he would give an estate to trustees, which would fall into their possession on his death, and which they would hold on trust to receive, say, 300*l.* a year out of the rents, and pay it to his widow during her life. Another estate would follow to another set of trustees on trust, to sell or mortgage the land so as to raise, say, 10,000*l.* for his younger children. Estates tail would then be given to the sons of the marriage, according to age, followed by an estate tail to all the daughters, and finally an estate in fee to the settlor. This, of course, is one of the simplest of settlements, but it will suffice for our purpose. It will be seen that the settlor enjoys his land during his life, but cannot in any way deal with it so as to injure the provision made for his wife and children. On his death, his wife gets her annuity; and the eldest son, who succeeds in tail, takes the estate, subject to the payment of this annuity, and subject also to the payment of 10,000*l.* to his brothers and sisters. If he wishes to have the estate clear, he must save or obtain this sum. Any son being of age may, when he comes into the estate as tenant in tail, bar the entail and do what he wishes with the land (only this will not affect the annuity to

his mother or the 10,000*l.*); and this is usually done on the marriage of the tenant in tail, when the estate is tied up for another generation. Until barred, the estate in tail will, of course, descend in the ordinary way through the settlor's issue, and on failure of the issue will expire. The estate in fee simple then arises, and the lands will go to the heir-general of the settlor.

From this it will be seen that many of the greatest peculiarities in the manner in which the soil of England is held result from custom rather than from pure law. The quantity of land which descends by virtue of the law of primogeniture is exceedingly small. Nearly all land descends as it is arranged it shall descend by the owners when the claims of all persons having any interest in the family property are considered. Usually the estate is given to the eldest son, and usually it reaches him burthened with charges in favour of other members of the family, except a provision can be made for them otherwise.

LECTURE III.

Estates in expectancy—Reversions and Remainders—Legal and equitable estates—Origin of equitable estates—Restraint on the creation of future estates—Copyholds—Their history—Rights of copyholders—Their history—Leases for terms of years—Their peculiarities—Mortgages—Methods of conveying land.

HERETOFORE we have been dealing with actual estates in the possession of their owners, but estates of almost every description may exist in pure expectancy—the owners only entering into possession when the prior estates have determined or come to an end. Such estates may be for life or in tail, or in fee or for terms of years. And the same lands may be subject to all these different species of estates at one and the same time. Thus land may be given to A. for life, then to B. for life. In such case B.'s estate is purely expectant—he can derive no profit from the land until A. dies, and any further life estate—and they may be created *ad infinitum* so long as the donees are living—must in its turn be deferred until B.'s has come to an end. So lands may be given to A. for life, then to B. in tail, then to C. in fee simple. In such case B. does not enjoy the lands until the determination of A.'s estate, and C. in his turn must await the determination of B.'s.

These future estates are divided by lawyers into two great classes—estates in remainder, and estates in reversion. The distinction between these classes will be easily

understood if the position of the owner in fee simple of a piece of land who carves a smaller estate out of it be remembered. Suppose, for example, he grants a life estate only, it is evident that only part of his estate has been granted and there is still a large portion left; for though he has parted with the temporary possession of the land, it must eventually return or revert to him or his heirs. This right, therefore, is called the right of reversion, and the landlord is said to have his estate in reversion. Supposing, however, after the grant of the life estate the owner in fee grants out of the portion left another estate, say, an estate tail, or grants the whole of his reversion to another person, then the estate of that other person is called a remainder: the reversion being the right of the original grantor of a smaller estate than that which he possessed to get his lands back on the determination of that smaller estate, and the remainder being the right to get the lands on such determination by virtue of a grant from the grantor of the estate in possession. Thus it will be seen that between the owner of an estate in reversion and the tenant of the estate in possession tenure always exists, as the tenant must have derived his estate from the reversioner or his ancestors in title, while no tenure can exist between the tenant of the estate in possession and the owner of an estate in remainder, both having derived their estate from the same source—the grant of the owner in fee. There is another class of future estates, called executory interests, too technical to be described here.

Again, estates in land may be legal or equitable, and that this distinction may be understood it is necessary to explain a relic of ancient law which still plays a very

important part in all dealings with land. In the earlier days of our land laws the actual possessor of the land was for all purposes deemed the owner. It was from him the duties incident to the holding of the lands were due, and it was he that had the right of enjoying the lands. The freeholder who actually possessed the land, therefore, no matter whether his estate was for life or in tail or in fee, was deemed to have the feudal possession, or, as it was technically called, the seisin, of it, and the freehold was said to be in him, or that he was seised.

So much importance was attached to this feudal possession that rigid rules obtained as to its transfer and devolution, and the law courts at Westminster steadily refused to regard any estate in possession in land except that which existed in the person having the seisin; but the Court of Chancery, desirous of aiding the Church to avoid the mortmain laws, and not being guided by strict rules of law, but by certain ethical or moral principles, introduced the doctrine, that though the feudal possessor was, in the eyes of the law, the person actually in the enjoyment of the lands, yet there might be cases where some other person had such a moral right to the lands, that though the seisin was not in him, the court would compel the person in whom it was to yield all the benefit derivable from the land to him. The conflict, not only between the Court of Chancery and the Courts of Westminster, but between the Court of Chancery and the Legislature, respecting this doctrine, was long and bitter, but in the end the Court of Chancery conquered, and the doctrine has now for centuries been firmly established, and on it rests a wide and complicated branch of law. The distinction,

therefore, between legal and equitable estates is, that the owner of a legal estate has the feudal possession or seisin of the land, and is the only person recognised by the courts at Westminster Hall; while the owner of the equitable estate, although not recognised by the courts of law as having any right to the lands, is yet held in equity to be the person entitled to all the enjoyment and profit arising from them according to the extent of his estate, and his rights are enforced by the Court of Chancery at Lincoln's Inn. Hence we have two sets of courts dealing with land on entirely different codes of principles; so that if a grant of land be made to A. in trust for B., at Westminster Hall A. is held to be the owner, and B. is of no account, but at Lincoln's Inn B. is held to be the owner, and A. will not be permitted to derive one shilling out of the property. One of the effects of the Lord Chancellor's Bill now before Parliament would be that both legal and equitable estates would be recognised in all the courts. Notwithstanding this conflict of principles, the province of each set of courts is so clearly defined that little practical difficulty arises from it. A man goes to law for the enforcement of one species of right, and he goes to equity for the enforcement of another, but in all dealings with land the double estates, legal and equitable, which may and so commonly do exist, must be always carefully borne in mind.

In truth, it would be impossible to deal with land so as to satisfy the requirements of modern society if equitable estates did not exist. It is by means of them that the rights of married women and younger children are secured in settlements, and even in ordinary business transactions they allow an elasticity of dealing

with land which would be quite impossible if the strict law as to legal estates alone obtained.

The Court of Chancery will, however, follow the law whenever it can do so consistently with the strict principles of equity. So far, therefore, as extent and descent, and in many other respects, the law as to equitable estates is the same as that of legal. Thus, if an estate be settled in trust for B. in tail, B.'s estate will descend to his issue if unbarred, and he will take the rents and profits of the estate to the same extent, and possess just the same right of barring the entail and investing himself with the equitable fee, as if he had a legal estate. But at the same time, the Court of Chancery will not recognise many of the mere technicalities of the courts of law.

It is evident that if some limitation were not put to this power of creating a succession of estates coming into possession one after the other, land could be practically rendered inalienable, to the great injury of the community. This limitation does exist in two rules of law. One of these declares that no life estate can be given to the unborn child of a living person, followed by an estate in remainder to any of the issue of such unborn child. The other declares that no executory estate can arise except within the period of some fixed lives actually living at the time of the creation of the executory estate, and twenty-one years after the death of the last of such lives. These rules absolutely prevent land being tied up by any settlement for a longer period than twenty-one years after the death of some person living at the date of the making of the settlement.

Of estates in land not freehold, that is, copyholds

and leaseholds for terms of years, copyholds are best considered first, as in many ways they resemble freeholds.

As has been already stated, when great lords obtained a grant of a large tract of land, their usual and indeed only way of making it profitable was by subletting the portion not actually cultivated by themselves, and so it became customary to grant large pieces to freemen, who held these freeholds of the lord, subject to the performance of various services. The portion held by the lord for his own immediate use was cultivated by his serfs, a portion usually being given to them for their own subsistence. This was the origin of manors, a modern manor being simply one of these old estates; the freeholds of the manor—the lands formerly let to freemen, the copyholds—the lands given to the serfs for their subsistence, the commons—the waste lands which the lord did not trouble himself to allot, but allowed all his tenants to use if they pleased, the manorial rights—the remnants of the old feudal services, and all the machinery of courts and stewards—the old methods of managing the estate.

But the statute *Quia emptores* made a great change in all this. Thenceforth, the lords could no longer grant estates in fee and reserve any services, or create the relationship of landlord and tenant. Hence, since the passing of that Act, the creation of a manor has been impossible, and all the manors now existing had their origin before the 18th year of Edward I.

This custom of granting a piece of land to the serf, that he might cultivate it for himself, was such a natural way in those times for providing for the subsistence of the villein, that it probably prevailed from

the first, especially as many of these villeins were not held 'in gross,' as it was technically called, that is, as a purely personal chattel, like a slave was held in the United States before the abolition of slavery, but were 'villeins regardant,' or serfs that the lord could not dispose of except with the land to which they were attached. The whole of the history, not alone of the steps by which these slaves acquired a definite interest in their holdings, originally granted in lieu of mere food and clothing, but also of the extinction of the slavery of Englishmen in England, is exceedingly obscure. It is impossible even to say exactly when the institution of serfdom ceased to exist. For it died out, and has never been abolished by law. Actual sales of villeins took place as late as Queen Elizabeth's day, and other traces might be discovered many years later. Forms of enfranchisement did not disappear from the ordinary law books in use until about the time of the Commonwealth. We can tell definitely enough when serfs became so absolutely entitled to their holdings that they ceased to be slaves, but how this came about is very obscure.

The wide diversity of customs in manors shows how arbitrary was the will of the lords. In some the pieces of land were simply granted to the serfs without any right of succession being recognised in the children. In others the lord permitted all the sons, or perhaps the eldest or youngest, to succeed to the father's holding, or in default of issue let it go to the collateral relatives. In process of time all these capricious rules became established as customs, and the descent of copyholds is still regulated by them.

No doubt the villeins were much aided in acquiring

fixity of tenure by the custom of granting lands to the humblest classes of freemen to hold by villein services—that is, menial services which were deemed fit only for a serf. This custom existed from the first, and it gradually extended so far that when fixity of tenure was secured to copyholders, very few of them can have been villeins in blood and tenure—that is, pure slaves. However this may be, their fixity of tenure was acquired very gradually. In the time of Edward III. we find traces of those villeins having acquired some right in their holdings, but it was not until the reign of Edward IV. that certainty of tenure was definitely given to them by a decision of the judges.

Now-a-days, therefore, a copyholder holds his land by as good a title as a freeholder, but he holds a very different species of estate, and holds it in a very different way. He holds his estate by copy of the court roll of the manor, and subject to the custom of the manor. He may have an estate in fee, or in tail, or for life, according to that custom, but the descent of those estates —that for life, being renewable, is practically an estate of inheritance—is regulated by the same custom. In some manors those copyhold estates descend like similar freehold estates; in others the usual line of descent is broken by some peculiar customs; so the rights of husband and wife are regulated by custom; no general rule can be laid down for them in respect of copyholds. So, too, with regard to the conveyance of copyholds, it must be done by surrender of the lands to the lord, and the admittance of the new owner according to the custom of the manor. Subject, however, to all these customs, copyholds may be practically sold, devised by will, and settled like freeholds. They

are also liable for their owner's debts, though only since 1838.

The copyholder, being in strict law a person holding the land merely at the will of the lord, is not held to have the feudal possession or seisin of it—that is in the lord. This relic of ancient seignorial rights is still valuable to a lord. He owns all the timber on the land, and all the minerals beneath it, though he must have the copyholder's permission to enter and cut the timber, or open the mines. Besides these advantages, the lord possesses many others. On every change of tenancy fines are payable to him, and he has his chance of getting back the land by escheat on the failure of heirs of the copyholder, or on his attainder. In many manors, too, money is payable to the lord as rent, or as a relief. Heriots also are due by custom of some manors—a heriot being some particular chattel or sum of money which the lord has a right to on the death of a tenant.

It will be seen that many of these peculiarities may prove troublesome to landlords or copyholders. So, of late years, Acts of Parliament have been passed, under which either may procure the enfranchisement of the land—in other words, have the copyhold turned into a freehold.

One of the most common modes of holding land in our day is by a lease for a term of years, a method scarcely known when freeholds and copyholds came into existence; and even long after lands were held in this way, the estate so given was deemed of little value or importance.

None of the feudal services attached to these leaseholds; the tenant was bound simply to pay his rent, or

perform any special services he covenanted to perform, and none of the feudal rights which possession of the seisin gave the freeholder belonged to the leaseholder. He merely possessed the rights over the land demised which were actually given by the lease, and often those rights were very restricted, as most of the early leases were simply for agricultural purposes and for short terms. As these estates were subject to no feudal services or burthens, neither were they subject to the feudal law of inheritance. They were deemed mere personal property, and on intestacy went to the next of kin, like money or cattle. No change has ever been made in this respect, although now leases for terms of years are often granted for such a length of time, and with so few restrictions on enjoyment, that they are practically as valuable as estates in fee simple.

There is another species of interest in land extremely common—a mortgage debt. To this all lands are subject, as every man may mortgage his land to the extent of his estate. The common form of a mortgage consists of a grant of the land from the debtor to the creditor, with a condition that if the money borrowed be repaid at some fixed date, the creditor will re-convey the land to the debtor. As a matter of fact, the money is never paid or intended to be paid at the stipulated time, and consequently a relationship is established between the creditor and debtor which fully illustrates the working of our system of legal and equitable estates. The debtor, not having fulfilled the formal condition as to the payment of the debt, is held by the courts of law at Westminster to have parted absolutely with his land, while the creditor is looked on as the real owner of it. But a very different view of the

position is taken by the Court of Chancery. True, it says, the condition has not been observed, but then the land was really only conveyed as a security for the debt, and whenever the debtor pays it off the creditor must reconvey the land; if the creditor wishes to have his money or the land definitely, he must come to this court and get a time fixed for payment, then if such payment be not duly made, we shall allow the creditor to retain the land absolutely. In short, the law courts will look merely to the form of the contract, but the Chancery Court will regard the meaning which in good faith and equity should be attached to it.

The position, therefore, of a mortgagor of land is this:—The legal estate in his land is vested in the mortgagee conditionally before the day named in the mortgage deed for payment of the debt, so that if the debt was paid on the day, both in law and equity the mortgagee is bound to reconvey the land. If, however, this day be allowed to pass without payment, the mortgagor's right to relief is gone at law, but in the eyes of the Court of Chancery he still possesses a right—called his equity of redemption—to pay the debt, and have a reconveyance of the land at any time before this right is barred. For, of course, this right cannot exist for ever, or the conveyance of the land would be of little advantage to the mortgagee. It is always open to the mortgagee, after the date of payment, to get the Court of Chancery to fix a day for the positive payment of the debt, and if it be not paid on that day, then the equity of redemption will be foreclosed or barred, and the land remain the property of the mortgagor. As a matter of fact, this last event rarely happens, for if the lands mortgaged are of greater value than the amount due to

the mortgagee, they are always sold, the debt paid out of the purchase money, and the balance paid to the mortgagor.

We have, finally, to deal with the present mode of conveying land. The actual mode of conveyance is simple enough; freeholds are conveyed by a deed of grant; copyholds by a formal surrender of the land to the lord, followed by his admittance of the new tenant to it; leaseholds for a term of years by deed of assignment. But it is very different when the extent of the estate to be conveyed has to be determined and verified. It will easily be seen that as land may be subject to so many different species of estates, and as so many persons may have the rights and interests in it which have been described, not to speak of a host of other rights—those of way, water, light, shooting, which have not been touched on—the greatest care must be exercised by a purchaser lest in buying land he finds his purchase subject to any of those estates or rights. The way this is done in practice is by examining all the deeds relating to the land which have been executed for many years prior to the sale. This is called investigating the title of the person owning the land, and as, in the absence of a special agreement, every vendor of land must show a sixty years' title, it can easily be understood that the process is troublesome and expensive. Many plans have been suggested for lessening this trouble and expense, all of them turning, more or less, on the institution of a public registry for contracts relating to land; but none has yet been proposed that quite meets the wants of so complicated a society as ours, and still every person purchasing land must rely on the acuteness and skill of his legal advisers for protection.

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